IN SENATE OF THE UNITED STATES.

MARCH 4, 1846.

Submitted, and ordered to be printed.

Mr. PHELPS made the following

REPORT:

The Committee on Revolutionary Claims, to whom was referred the petition of the executor of Henry Tatum, deceased, an officer of the Virginia line of the continental army during the revolutionary war, praying allowance of the commutation supposed to be due to said Tatum, report:

That the petitioner relies for proof that said Tatum served to the end of the war, and was entitled to the commutation—

1st. Upon an allowance of bounty land at the land office in Virginia; and,

2d. Upon the allowance of a pension to said Tatum under the act of May 15, 1828, which pension was given to those only who were entitled to commutation.

It appears that Tatum received a warrant from the land office in Virginia—1st, for 2,666⅔ acres; 2d, for 444⅓ acres; and, 3d, for 296 acres; making in all 3,407 acres, equal to the sum of $4,258 75, being for seven years and eight months' service. Upon what evidence these allowances were made, the committee are not advised; but they are in possession of a piece of evidence which enables them to test their accuracy.

In November, 1781, the legislature of Virginia passed an act providing for making good the depreciation in the pay of the officers in the continental line of that State, and for paying the accounts of such officers from the 1st of January, 1777, to the 1st of January, 1782. Under this act the accounts of the officers were adjusted, generally by the officers themselves; and in the adjustment it became necessary to ascertain, not only the *length*, but the *precise period* of service, as the depreciation was different at different periods. The accounts thus stated, being the joint act of the officer and the accounting agent of the government, furnish the most satisfactory evidence of the service. Now it appears in this case, by a certificate of the auditor of Virginia, that Lieut. Tatum settled his account in person on the 8th of February, 1783, and received a certificate for £112 6*s.* 5*d.* for his services from the *1st of January*, 1777, *to 24th September*, 1778. Thus it appears from his account, as adjusted with the accounting officer by himself, that he went out of service on the 24th September, 1778. As there was a new arrangement of the Virginia line at White Plains in September, 1778, and the fifteen regiments were reduced to eleven, it is altogether probable that he became supernumerary by that arrangement. Yet, although his service terminated in September, 1778, he is allowed bounty land for

Ritchie & Heiss, print.

seven years and eight months. As the war commenced with the battle of Lexington, April 19, 1775, he could have served but three years and five months, supposing him to have entered the service as early as that date. The land bounty was probably allowed upon a ground which has recently been assumed—that an officer who had become a supernumerary was to be regarded as still in service unless he had resigned; a doctrine which the old Congress uniformly and steadfastly repudiated. That class of officers were not considered in service. They were not entitled to pay, rations, or forage; but, upon becoming supernumerary, they were entitled to one year's extra or additional pay, as upon a discharge.

As Lieut. Tatum was not in service in October, 1780, when the resolution granting half pay was adopted, he was entitled to nothing under that resolution. The allowance of a pension under the act of May 15, 1828, is not, in the opinion of the committee, sufficient evidence of a right to commutation. That act was passed about forty-five years after the termination of the war. Then, for the first time, did the right to a pension accrue. In the mean time the war office had been twice destroyed by fire, and the mass of pay and muster rolls and other documents, relating to services of the revolutionary army, had been consumed. Under these circumstances, to have required documentary proof of service, would have defeated the benign purpose of the act. Such evidence only could be required as might be supposed, under the circumstances, and considering the lapse of time, to be extant. The declaration of the party, corroborated by the affidavits of his fellow-soldiers and others, was deemed sufficient. A degree of liberality, in regard to the evidence required, was exercised by the department, which could be justified upon no principle except the indulgence of a nation's gratitude toward those who achieved its independence, and which, if extended to all claims, would bankrupt the government. The committee are not to be understood as bestowing censure upon the department; but having had occasion heretofore to examine many of those allowances, they are compelled to say that a large portion of such allowances are most clearly erroneous. This was, perhaps, unavoidable, considering the evidence upon which the department was compelled to rely. To give to these allowances the effect of even prima facie proof of a right to commutation, would be to give them an effect neither contemplated nor designed when the allowances were made. Nor do the committee deem it either just or expedient so to treat them. The commutation was payable at the close of the revolutionary war. At that period, record evidence existed which would determine satisfactorily the right of the officer, and no regard was then paid to such evidence as was deemed satisfactory under the act of May 15, 1828. If an officer was entitled to commutation, and neglected then to claim it, the committee see no propriety in allowing it upon less satisfactory evidence than would have been required at that time. Indeed, the presumption, from the lapse of time, is strongly against the claim, indicating either that it was not due or that it has been paid; and the committee think not only that full and satisfactory evidence should be demanded, but that the long delay should be accounted for by some explanation of the reason why, if the claim is just, it was not made and satisfied at the proper period.

To treat an allowance of a pension under the act of May 15, 1828, as sufficient prima facie evidence, at this day, of a right to commutation, would, in the opinion of the committee, be a very dangerous precedent. It would bring the whole roll of pensioners, under that act, before Congress

as claimants for commutation, and the committee would be under the necessity of searching among the remains of the revolutionary records for proof either that the claim has been paid or that it was not due. To say nothing of the unreasonable labor imposed upon the committee, an unanswerable objection to this course exists in the fact, that the war office having been twice burnt, a great portion of these revolutionary records are destroyed. But even if the allowance is sufficient, prima facie, to establish the right to commutation, it is, in the opinion of the committee, most decisively rebutted by the account of Lieut. Tatum as adjusted by himself, and still remaining in the auditor's office at Richmond, and which shows that he went out of service in September, 1778.

There is still another ground upon which the committee would reject this claim. The committee in the case of Isaac Brownson (see, 2d session 27th Congress, Senate doc. No. 159) held that the acceptance of the pension under the act of May, 1828, was in itself a waiver of all claim on account of the commutation; or, in other words, that the pension was a satisfaction of such claim, and a sufficient objection to the allowance of the commutation by Congress. This view of the matter was sustained by the Senate, and furnishes at once an answer to all those claims which rest merely upon the act of the department in allowing the pension under that act. The committee, therefore, recommend the following resolution:

Resolved, That the prayer of the petitioner be rejected.